

Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF NURSING,)	
)	
Petitioner,)	
)	
vs.)	No. 12-1618 BN
)	
MONICA A. ROUX,)	
)	
Respondent.)	

DECISION

Monica A. Roux is subject to discipline because she appeared for duty under the influence of lorazepam, hydrocodone, and marijuana.

Procedure

The State Board of Nursing (“Board”) filed a complaint on August 24, 2012, seeking this Commission’s determination that cause exists to discipline Roux’s license as a licensed practical nurse (“LPN”). Roux filed her answer on November 1, 2012.

This Commission convened a hearing on the complaint on March 1, 2013. Stephan Cotton Walker represented the Board. Roux did not personally appear and was not represented by counsel.

The matter became ready for our decision on April 18, 2013, the last date for filing a written argument.

Findings of Fact

1. Roux was licensed by the Board as an LPN at all times relevant to these findings.
2. Roux was employed as an LPN by Knox County Nursing Home (“Nursing Home”), in Edina, Missouri, at all times relevant to these findings.
3. On March 3, 2011, Roux appeared for duty at the Nursing Home exhibiting unusual behavior. Roux was observed to be irritable, shaking, trembling, aggressive towards other staff, speaking loudly, speaking fast, fidgety, and with red eyes.
4. Also on March 3, 2011, a Nursing Home resident under Roux’s care fell, and Roux failed to follow the Nursing Home’s protocol for this emergency.
5. Based on the aforementioned observances and behaviors exhibited by Roux, she was asked to submit to a urine drug screen by the Nursing Home. The urine drug screen revealed that Roux possessed and tested positive for lorazepam,¹ hydrocodone,² and marijuana.³
6. Roux did not have prescriptions to validly possess or consume lorazepam, hydrocodone, or marijuana.

Conclusions of Law

We have jurisdiction to hear the case.⁴ The Board has the burden of proving that Roux has committed an act for which the law allows discipline.⁵ The Board alleges that there is cause for discipline under § 335.066:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any

¹ Lorazepam is a Schedule IV controlled substance pursuant to § 195.017.8(2)(bb). Statutory references are to RSMo. Supp. 2012 unless otherwise noted.

² Hydrocodone is a Schedule II controlled substance pursuant to § 195.017.4(1)(a)j.

³ Marijuana is a Schedule I controlled substance pursuant to § 195.017.2(4)(w).

⁴Section 621.045.

⁵*Missouri Real Estate Comm’n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use or unlawful possession of any controlled substance, as defined in chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 335.011 to 335.096;

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by sections 335.011 to 335.096;

* * *

(12) Violation of any professional trust or confidence;

* * *

(14) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

Controlled Substances – Subdivisions (1) and (14)

Roux tested positive for lorazepam, hydrocodone, and marijuana. Section 195.202 provides:

Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.

Section 324.041 provides:

For the purpose of determining whether cause for discipline or denial exists under the statutes of any board, commission, or committee within the division of professional registration, any licensee, registrant, permittee, or applicant that tests* positive for a controlled substance, as defined in chapter 195, is presumed to have unlawfully possessed the controlled substance in violation of the drug laws or rules and regulations of this state, any other state, or the federal government unless he or she has a valid prescription for the controlled substance. The burden of proof that the

controlled substance was not unlawfully possessed in violation of the drug laws or rules and regulations of this state, any other state, or the federal government is upon the licensee, registrant, permittee, or applicant.

Roux tested positive for these controlled substances and did not provide proof of legal possession. We find that Roux unlawfully possessed lorazepam, hydrocodone, and marijuana in violation of § 195.202. Such unlawful possession is cause to discipline her license under § 335.066.2(1) and (14).

Professional Standards – Subdivision (5)

In its complaint, the Board limits its allegations under this subdivision to misconduct, gross negligence, and dishonesty. Therefore, we limit our analysis under this subdivision to these issues.

Misconduct means “the willful doing of an act with a wrongful intention[;] intentional wrongdoing.”⁶ Roux’s conduct of appearing for duty as an LPN while under the influence of three controlled substances was clearly a willful act with a wrongful intention. She committed misconduct.

Gross negligence is a deviation from professional standards so egregious that it demonstrates a conscious indifference to a professional duty.⁷ There is an overlap between the required mental states for misconduct and for gross negligence to the extent that misconduct can be shown for the licensee’s “indifference to the natural consequences” of his or her conduct and that gross negligence requires the licensee’s conscious indifference to a professional duty or standard of care. Before determining whether there was gross negligence, we examine whether

⁶*Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm’n Nov. 15, 1985) at 125, *aff’d*, 744 S.W.2d 524 (Mo. App., E.D. 1988).

⁷*Id.* at 533.

there was negligence.⁸ Negligence is defined as “the failure to use that degree of skill and learning ordinarily used under the same or similar circumstances by members of [the] . . . profession.”⁹ By appearing for duty under the influence of controlled substances, Roux failed to use a degree of skill ordinarily used under similar circumstances by other LPNs. She failed to do this, and her conduct was negligent. Furthermore, Roux’s actions could have led to patient harm. Therefore, her deviation from her professional duty as an LPN was so egregious that it rises to the level of gross negligence. Therefore, we find Roux committed gross negligence.

Dishonesty is a lack of integrity or a disposition to defraud or deceive.¹⁰ The Board did not present evidence of an intention to defraud or deceive. Therefore, we do not find that Roux acted with dishonesty.

Roux is subject to discipline under § 335.066.2(5) for misconduct and gross negligence.

Professional Trust – Subdivision (12)

Professional trust is the reliance on the special knowledge and skills that professional licensure evidences.¹¹ It may exist not only between the professional and his clients, but also between the professional and his employer and colleagues.¹² Both employers and patients must trust LPNs to not appear for duty under the influence of controlled substances. In doing so, Roux violated professional trust. She is subject to discipline under § 335.066.2(12).

⁸ Although this is not a separate cause for discipline, we consider the “negligence” standard to compare it with the “gross negligence” standard.

⁹ *Hickman v. Branson Ear, Nose & Throat, Inc.*, 256 S.W.3d 120, 122 (Mo. banc 2008).

¹⁰ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

¹¹ *Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

¹² *Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App., E.D. 1989).

Summary

Roux is subject to discipline under § 335.066.2(1), (5), (12), and (14).

SO ORDERED on May 14, 2013.

\s\ Sreenivasa Rao Dandamudi

SREENIVASA RAO DANDAMUDI
Commissioner